

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1356 of 1997

with

Civil Application No.10511 of 1997

in

SPECIAL CIVIL APPLICATION No 228 of 1997

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN

and

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No
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MANAGING TRUSTEE

Versus

JUGABHAI A PRAJAPATI

Appearance:

MR RV DESAI for Appellant

MR GM JOSHI for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.H.KADRI

Date of decision: 29/09/98

C.A.V. Judgment: (Per: Kadri, J.)

1. The appellant, who is the Managing Trustee of Mallinath Maharaj Karkhana Trust, has filed this appeal under clause 15 of the Letters Patent, challenging the judgment and order dated May 25, 1997 passed by the learned single Judge in Special Civil Application No.228 of 1997 rejecting the petition filed by the appellant, and confirming the award of the Labour Court, Ahmedabad, dated 20.8.1996 in Reference (LCA) No.468 of 1986, whereby the appellant was directed to reinstate the respondent in service with 50% back wages.

2. The respondent was serving as permanent labourer with the appellant for eight years prior to the date of termination of his service with effect from July 28, 1984. At the relevant time, the respondent was getting salary of Rs.250/- per month. Since the services of the respondent, who was a permanent employee, were terminated without holding any enquiry, the respondent raised an industrial dispute and, therefore, a reference was made before the Labour Court, Ahmedabad. The said reference was registered as Reference (LCA) No.468 of 1986. During the proceedings before the Labour Court, the respondent was examined. A contention was raised by the appellant before the Labour Court that the appellant was not an 'industry' and the reference was not maintainable under the provisions of the Industrial Tribunal Act, 1947 ('Act' for short). It was also contended that the respondent had abandoned the service and his services were not terminated. After considering oral as well as documentary evidence, the Labour Court, by its award dated 20.8.1996, reinstated the respondent in service of the appellant with 50% back wages.

3. The appellant challenged the award of the Labour Court before the learned single Judge by filing Special Civil Application No.228 of 1997. The award of the Labour Court was confirmed by the learned single Judge by judgment and order dated 25.9.1997, which is challenged by the appellant in the present appeal.

4. The learned counsel for the appellant has vehemently argued that the respondent had abandoned his work, and his services were never terminated by the appellant. In support of his submission, the learned counsel for the appellant has placed reliance on the decision of the Apex Court in the case of G.T.Lad and others vs. Chemical and Fibres India Limited, reported in 1979 Lab.I.C. 290. In the above decision, the Apex Court has ruled that whether there has been a voluntary

abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. In the case before the Apex Court, certain workers had gone on strike during pendency of an industrial dispute in response to the strike notice given by their Union to press certain demand. The management by a letter informed the workers that their failure to join duty by a particular date would be treated as abandonment of service. The workers in reply intimated that they did not intend to abandon service and alleged that the letter was received after the date prescribed therein for joining duty. The management while acknowledging receipt of the workmen's letter did not refute the allegation of workmen. Moreover, the workmen returned the cheques sent to them for their leave salary, gratuity, etc. Ultimately, the workmen were dismissed from service. The Apex Court, in the light of the above facts, held that there was nothing in the surrounding circumstances to infer an intention on the part of the workmen to abandon the service.

5. The learned counsel for the appellant has further submitted that the respondent in his evidence before the Labour Court had admitted that he had abandoned the service and in spite of notice he had not resumed his duties. This submissions of the learned counsel for the appellant deserves to be rejected. A copy of deposition of the respondent was produced on record along with Special Civil Application No.228 of 1997. In cross examination, the respondent deposed that he could not resume duty after 28.7.1984 as he was prevented by the management from entering the Trust premises. The learned counsel for the appellant also submitted that the respondent was served with a notice on 19.2.1985 whereby the respondent was directed to resume his duties. It is submitted that the said notice was served on the respondent at Bhoyani where he was serving in a temple. It is, therefore, submitted by the learned counsel for the appellant that the respondent never intended to resume his duties with the appellant and, therefore, the award of the Labour Court deserves to be quashed and set aside. In our view, the submissions of the learned counsel for the appellant are meritless. In the notice dated 19.2.1985, it is stated that the respondent had misbehaved on 26.7.1984 and 27.7.1984 and, therefore, he was placed under suspension and his services were terminated on 28.7.1984. It is also stated that by notice dated 18.12.1984 chargesheet was served on the respondent to which the respondent had sent a reply, which was not found to be satisfactory. In the said notice, it is specifically mentioned that the services of

the respondent were terminated from 28.7.1984. Thus, it becomes evident that the services of the respondent who was a permanent employee were terminated from 28.7.1984 without following any procedure under the Act. In this view of the matter, the decision relied upon by the learned counsel for the appellant in the case of G.T.Lad (supra) will not apply to the facts of the present case. On the contrary, it will help the case of the respondent.

6. It is vehemently submitted by the learned counsel for the appellant that the respondent was gainfully employed after 28.7.1984 and, therefore the Labour Court was not justified in awarding 50% back wages to the respondent. This submission of the learned counsel for the appellant deserves to be rejected. Merely because letters and notices were sent to the place where the respondent was residing, it cannot be presumed that he was gainfully employed after termination of his service. Furthermore, the Labour Court has awarded only 50% back wages. Considering over all facts and circumstances of the case, in our view, the Labour Court has not committed any error in passing the award of reinstatement with 50% back wages. The order of determination of salary at Rs.250/- per month is quite reasonable and proper.

7. In the facts and circumstances of the case, in our view, the learned single Judge was justified in confirming the award of the Labour Court, Ahmedabad. We see no merit in this appeal. This appeal is dismissed. Notice is discharged.

8. Civil Application No.10511 of 1997 is rejected. The ad-interim relief stands vacated. Notice is discharged.

9. The appellant is directed to reinstate the respondent with 50% back wages within four weeks from the date of receipt of writ of this order.

There shall be no order as to costs.

(swamy)